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 SEMICONDUCTOR, INC. MATROX ELECTRONIC
 SYSTEMS, LTD., MATROX GRAPHICS INC., MATROX
 INTERNATIONAL CORP. and MATROX TECH, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

RICOH COMPANY, LTD.,

Plaintiff,

vs.

AEROFLEX INCORPORATED, AMI
 SEMICONDUCTOR, INC., MATROX
 ELECTRONIC SYSTEMS, LTD., MATROX
 GRAPHICS INC., MATROX
 INTERNATIONAL CORP. and MATROX
 TECH, INC.,

Defendants.

) Case No. CO3-04669 MJJ

)

) **DECLARATION OF ERIK K. MOLLER IN**
) **SUPPORT OF DEFENDANTS'**
) **OPPOSITION TO RICOH'S MOTION TO**
) **COMPEL INITIAL DISCLOSURE**
) **DOCUMENTS**

)

) Date: February 10, 2004

) Time: 9:30 a.m.

) Ctrm: 11

)

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)

I, Erik K. Moller, hereby declare as follows:

1. I am an attorney at law, licensed to practice in the state of California and an associate at the law firm of Howrey Simon Arnold & White, LLP ("Howrey"), attorney of record for defendants Aeroflex, Inc., AMI Semiconductor, Inc., Matrox Electronic Systems, Ltd., Matrox Graphics, Inc., Matrox International Corp., and Matrox Tech, Inc. (collectively "Defendants") in this litigation. The matters set forth in this declaration are based upon my personal knowledge, except where otherwise indicated, and if called as a witness, I could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of pages 45-60, from the transcript of the August 28, 2003 teleconference between Judge Sleet and counsel for the parties in this action.

3. Attached as Exhibit B is a true and correct copy of a letter dated September 8, 2003, from Mr. Kelley, counsel for Defendants, to Mr. Meilman, counsel for Plaintiff.

4. Attached as Exhibit C is a true and correct copy of a letter dated August 27, 2003, from Mr. Kelley, counsel for Defendants, to Mr. Meilman, counsel for Plaintiff.

5. Attached as Exhibit D is a true and correct copy of a letter dated September 11, 2003, from Mr. Kelley, counsel for Defendants, to Mr. Meilman, counsel for Plaintiff.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed on January 20, 2004, at Menlo Park, California.

/s/ Erik K. Moller

Erik K. Moller

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

RICOH COMPANY, LTD., : Civil Action
Plaintiff, :
v. :
AEROFLEX INCORPORATED, AMI :
SEMICONDUCTOR, INC., :
MATROX ELECTRONIC SYSTEMS :
LTD., MATROX INC., GRAPHICS :
MATROX INTERNATIONAL CORP., :
and MATROX TECH, INC., :
Defendants. : No. 03-103-GMS

Wilmington, Delaware
Thursday, August 28, 2003
11:00 a.m.
Telephone Conference

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

APPEARANCES:

ROBERT W. WHETZEL, ESQ., and
STEVEN J. FINEMAN, ESQ.
Richards, Layton & Finger
-and-
GARY M. HOFFMAN, ESQ.,
EDWARD A. MEILMAN, ESQ., and
KENNETH W. BROTHERS, ESQ.
Dickstein Shapiro Morin & Oshinsky LLP
(Washington, D.C.)

Counsel for Plaintiff

1 APPEARANCES CONTINUED:

2 FRANCIS DiGIOVANNI, ESQ.
3 Connolly Bove Lodge & Hutz LLP

4 -and-

5 TERESA M. CORBIN, ESQ.,
6 CHRISTOPHER KELLEY, ESQ., and
7 ERIC OLIVER, ESQ.
8 Howrey Simon Arnold & White, LLP
9 (Menlo Park, California)

10 Counsel for Defendants

11 - - -

12 THE COURT: Good morning, counsel.

13 MR. WHETZEL: Good morning, Your Honor. Bob
14 Whetzel from Richards Layton for plaintiff Ricoh. With me is
15 my colleague here at Richards Layton Steven Fineman. Also on
16 the call for Ricoh are Messrs. Gary Hoffman, Ed Meilman and
17 Ken Brothers, my co-counsel. I suspect Mr. Hoffman will be
18 our principal spokesperson this morning.

19 THE COURT: Good morning, all.

20 For defendants.

21 MR. DiGIOVANNI: Frank DiGiovanni from Connolly
22 Bove. Also on the line from Howrey Simon in California are
23 Teresa Corbin and Chris Kelley and Eric Oliver.

24 THE COURT: Who is going to handle the argument
25 today?

MR. DiGIOVANNI: I will be arguing the first of
the agenda items, and I believe Mr. Kelley will be arguing

1 has been mentioned twice now, is of particular import, I
2 think, because that is the most sensitive information about a
3 particular product, it contains a lot of information. If
4 what they need is an understanding of the inputs that these
5 particular customers input to Design Compiler when they use
6 it, there are other ways to get to that information besides
7 having the sourcecode, which is the most sensitive
8 information in the company, regarding their key product.

9 THE COURT: Well, inevitably, counsel, in all of
10 these cases, and you know that from your vast experience in
11 this area, there is always information, oftentimes
12 extraordinarily sensitive information like this that is at
13 issue and that needs to be shared in order for the litigation
14 to proceed forward. That is why we have protective orders.
15 That is why there is a body of law that has grown up around
16 this issue. But it is incumbent upon counsel to recognize
17 the need to cooperate, and if necessary, to craft new
18 language that will enable this type of information to be
19 shared at appropriate levels. If it is for attorneys' eyes
20 only -- I think you understand where I am going with this.

21 If there is truly an alternate source that will
22 enable the plaintiff to prosecute its claims in a timely
23 fashion from which it can receive this information, I would
24 be interested in knowing and having the discussion right now
25 as to what that source is and whether it is acceptable to the

1 plaintiff.

2 MS. CORBIN: Can you address that, please, Chris
3 Kelley?

4 MR. KELLEY: Yes, absolutely. That is where I
5 was intending to go.

6 Your Honor, the issue here is that -- of course,
7 they have stated to this Court -- and I don't want to get
8 into the motion to stay or transfer -- but they have stated
9 that their beef is not with Synopsys. That it's by
10 defendants that are infringing. They are now suggesting that
11 Synopsys is a third party and as a party to this case has the
12 same obligations in discovery.

13 If you look at the way the interrogatory is
14 drafted, they identify the two things that would have some
15 connection with the user, namely, putting some stuff in at
16 the top of the process and getting something out at the
17 bottom. And they didn't mention anything about all the other
18 the stuff, which of course I think they are going to argue
19 are all internal to Design Compiler.

20 Their theory of infringement really is these
21 defendants use Design Compiler. If that is the case, which
22 they haven't come flat out and stated today, they should have
23 sued Synopsys. Instead, they elected to sue Synopsys'
24 customers. Now they are trying to back-door, attack
25 Synopsys' product by getting this very broad discovery.

1 I think the progression here is, to the extent
2 they really believe their case of infringement rests on
3 something the defendants are doing and there is some
4 peripheral material that is in the exclusive possession of
5 Synopsys, that is the kind of discovery they should get. But
6 what I think we are going to find out when we actually have
7 this meeting -- and I think that's the proper way to proceed,
8 is for the proper parties to get together and work out
9 exactly what they need and what we can give them, how we can
10 get them the information they need. I think what we are
11 going to find is everything they need relating exclusively to
12 stuff done by Design Compiler, nothing to what these two
13 defendants here are doing except using Design Compiler,
14 providing the regular inputs that Design Compiler normally
15 takes in and at the end of the process say thank you very
16 much for the output, I am going to take this off to go make
17 the chip.

18 THE COURT: It is not necessary for you to
19 respond, Mr. Hoffman. The Court has instructed the parties
20 to get together and discuss this matter. If you are still at
21 an impasse after that discussion, obviously, we will have to
22 revisit this.

23 Let's go on to No. 3.

24 MR. HOFFMAN: No. 3, Your Honor --

25 MR. KELLEY: Your Honor, I think this is our

1 item.

2 THE COURT: Yes.

3 MR. KELLEY: This is a relatively simple matter.
4 On the patent at issue, there are two inventors, Mr.
5 Kobayashi and Mr. Shindo. Ricoh has already agreed to make
6 Mr. Kobayashi available for deposition in Japan. That is
7 going forward.

8 At a fairly early point during discovery, we
9 asked them whether they were representing Shindo. I am not
10 going to get this exactly right. They said, no. We will see
11 if they will work with us. Give us your subpoena and we will
12 see if he will accept it, not formally, accept service, but
13 he will respond to it.

14 We haven't yet received from them a commitment,
15 any final word as to, one, whether Mr. Shindo will accept
16 this -- will cooperate in discovery, and two, whether they
17 intend to use him during trial, appear as a witness.

18 Both Mr. Shindo and Mr. Kobayashi, to our
19 knowledge, live in Japan. We have asked them if they would
20 bring Mr. Shindo to the United States. They have said, no,
21 you have to go to Japan to take his deposition if you want to
22 take his deposition. That's assuming of course that he at
23 some point determines to cooperate.

24 The problem we are facing, given the close of
25 discovery in January, the facilities for deposition, which [

1 assume everyone on the phone is familiar with, depositions in
2 Japan must takes place either at the embassy or one of the
3 consulates. The Tokyo Embassy is already completely booked.
4 There is a little opportunity, some space in the Osaka
5 Consulate, which, to our understanding, that is actually
6 where Mr. Shindo lives, is Osaka.

7 What we would like from the Court is some
8 deadline as to when they actually have to have a final word
9 as to whether Mr. Shindo is going to cooperate or not. Then
10 either to make him available in Japan in accordance -- with
11 one of the windows of opportunity that we have, at the Osaka
12 Embassy, or bring him to the United States for deposition
13 here.

14 THE COURT: Okay.

15 MR. KELLEY: We can depose him in advance of
16 trial.

17 THE COURT: Can we get an answer to the question,
18 counsel?

19 MR. HOFFMAN: Yes. Mr. Shindo, who is a third
20 party, we don't represent him, we have attempted to contact
21 him through numerous ways. He does not respond to any of our
22 requests to see if he would be willing to accept the
23 subpoena.

24 We have asked him to sit for a deposition and
25 produce documents. He does not respond. He is so far, by

1 lack of response, at least implicitly is indicating he is not
2 going to cooperate. He has been gone from Ricoh over ten
3 years now. It is our belief that he is not going to
4 cooperate. Obviously, if he is not going to cooperate, he is
5 not going to show up at trial or anything else.

6 Both plaintiff and the defendants had listed Mr
7 Shindo as someone who might have information. He is one of
8 the inventors. I presume he has some information. But no
9 one can force him as a third party to cooperate or to appear
10 for a deposition. We have been unsuccessful in doing that.
11 Consequently, we can't produce him.

12 With Dr. Kobayashi, he lives in Japan. He is
13 also not employed by Ricoh. We asked him. He came back and
14 said, yes, he would be willing to voluntarily appear. And
15 that deposition is set up in September, late September.

16 THE COURT: Mr. Kelley, what would you have
17 counsel do in this situation?

18 MR. KELLEY: I understand the difficult situation
19 he is in. This is the first time I heard he hadn't
20 responded. What I guess I would like is a drop-dead date, if
21 you will forgive the phrase, by which we will know he is
22 either going to cooperate by this date or there is not going
23 to be an opportunity for him to appear at trial. It seems to
24 me that should be sometime before the close of discovery, not
25 the final day of discovery.

1 MR. HOFFMAN: That is fine, Your Honor. We would
2 be willing to do that by the end of the year.

3 THE COURT: The drop-dead date is the end of
4 discovery.

5 MR. KELLEY: The complicating factor is if he is
6 going to be deposed in Japan.

7 THE COURT: No. I understand. Obviously, there
8 are challenges that would have to be overcome. For instance,
9 on the last day of discovery, you get word that he is
10 available, the Court will be flexible, perhaps, in all
11 likelihood, and permit the parties an additional period of
12 time in which to complete his deposition. But we can
13 certainly deal with that at the time. At least theoretically
14 the drop-dead date is the last day of discovery.

15 MR. HOFFMAN: We have asked the defendants to
16 produce all documents -- let me read it to you, a single
17 document request in this regard: Produce all documents and
18 tangible things identified in Section B, Items 1 through 8,
19 of defendants' initial disclosure dated and served on or
20 about May 30, 2003.

21 This is where they listed the documents that they
22 are going to rely upon in support of their case. We asked
23 them to produce the documents. Part of the response is,
24 defendants further object to this request as unduly
25 burdensome in seeking discovery of information not reasonably

1 calculated to lead to the discovery of admissible evidence.
2 Defendants further object to this document request as unduly
3 burdensome and on the basis that it seeks detailed discovery
4 regarding operations of defendants that has no relevance to
5 defendants' ASIC products or methods.

6 Your Honor, these are the documents that they
7 listed, the categories of documents they listed in their
8 initial disclosure.

9 The purpose of the initial disclosure, obviously,
10 is either done over the documents, list the categories so the
11 other side can go ahead and request them. We requested
12 them. They came back and have said, no, they are not
13 relevant. We tried to work it out with them. The response
14 was, and this is from Mr. Mower (phonetic), defendants
15 identified eight categories of documents that were likely to
16 be relevant to this dispute. Defendants did not suggest, as
17 your letter implies, that any documents that go into that
18 that fell into these categories were relevant.

19 Well, Your Honor, if they listed them, you only
20 list what you think is relevant. If it is relevant, we are
21 entitled to them. If they didn't list any -- if the
22 documents they listed are not relevant, then why did they
23 list them in their initial disclosure?

24 THE COURT: I agree. What is the defendants'
25 response to this?

1 MR. KELLEY: Your Honor, the categories that are
2 identified are relatively generic phrases. Product design,
3 development materials, marketing, promotional materials.
4 Sales and accounting statements. You get the gist. Sort of
5 generic classifications of documents.

6 When we prepared this, this is in the initial
7 disclosure statement, we did not have any idea what their
8 theory of infringement was. All we had was the complaint,
9 which doesn't provide any detail other than you infringe. We
10 did note what our invalidity arguments were going to be and
11 we started collecting that information as quickly as
12 possible. In fact, we have produced the thousands of
13 documents that plaintiffs sometimes refer to in their papers
14 are all prior art articles that we have produced. So we have
15 produced the materials we knew about in describing these
16 categories at that time. We immediately started producing
17 that stuff.

18 Since then, we have agreed to go ahead and get
19 the materials relating to -- and here's where the parties
20 have had some negotiation in the past few days leading up
21 though this call, not ultimately successful but some
22 narrowing of the differences -- we have agreed to produce, to
23 go get documents relating to ASIC products which were
24 developed in a process where there was some logic synthesis.
25 Logic synthesis is the kind of operation performed by Design

1 Compiler and other product.

2 And we wanted to further restrict the documents
3 to documents that had some bearing on the use of, the steps
4 which they have identified in their interrogatory, providing
5 input to the logic synthesis to Design Compiler and using
6 Design Compiler to map library cells to produce an output
7 file.

8 They have agreed that their document requests,
9 which asks for every information, all documents about every
10 ASIC, should properly, they have agreed to narrow their
11 request, just in the last few days, to ASIC, whether there
12 was some logic synthesis, i.e., having something to do with
13 the process that is described in their patent. So then the
14 remaining difference, really, in the document requests is
15 whether they get every document that the defendants have on
16 that ASIC or if they get the documents that are relevant to
17 the claimed process.

18 THE COURT: I have to say, this is the first time
19 that I have ever had to deal with an issue involving
20 production related to initial disclosures. I find it
21 extraordinary. Counsel --

22 MS. CORBIN: Your Honor, I think that the problem
23 was that the initial disclosure was inartfully drafted.

24 THE COURT: Perhaps. But what you need --

25 MS. CORBIN: The problem may be, there was a

1 subset of documents.

2 THE COURT: Ms. Corbin, I am going to talk over
3 you. You can't talk over me. I know we are on this bridge
4 line and sometimes we talk over one another, and that's okay.

5 But you are going to have to go back and finish
6 your conversation about this, counsel. I am not going to
7 spend any more time on this.

8 Let's move on to No. 5.

9 MR. MEILMAN: Your Honor, actually, you have
10 heard part of the discussion on the document requests.
11 Actually, the interrogatory, No. 7, they are also related.

12 THE COURT: Let's talk about them both then.

13 MR. MEILMAN: Right after the Rule 16 conference
14 in May, we served these document requests and interrogatories
15 on defendants about a month later. And as Mr. Kelley
16 indicated, we have been trying to resolve our differences
17 ever since. We have gotten some information in documents.
18 But it's been dribbled in piece by piece.

19 As Mr. Kelley has told you, that they keep
20 objecting on the grounds that we haven't told them our
21 infringement theory. In essence, what they are doing is they
22 want us to give them our Markman construction before they
23 decide what they are going to give us. That's something that
24 was raised during the Rule 16 conference, and the Court
25 refused to push the Markman conference before any discovery.

1 As Mr. Kelley indicated, we have narrowed the
2 definition of what we want, well, the patent in suit is
3 directed to a computer aided design process for making
4 application specific integrated circuits, what has been
5 referred to in this conference call as an ASIC.

6 We have asked them, we have narrowed our request
7 to processes for making ASICs by a computer-aided design
8 process using logic synthesis, development of those
9 processes, what equipment they have used, and any literature
10 they have had about that.

11 Last Friday, they have told us they will provide
12 us details about their current process (inaudible)
13 development. As to two of the three defendants, they have a
14 plant in the U.S. But as Mr. Kelley indicated, they want to
15 restrict that to Design Compiler because we indicated we knew
16 they used Design Compiler in at least some of their
17 processes.

18 Yesterday, they backtracked, as far as I
19 understand it, and said we will give you only details as to
20 some of these substeps in the process.

21 They have told us that one of the defendants,
22 Matrox Tech, did design work in Florida, but we will be
23 getting no information about that because it closed its plant
24 in 2000 and those records don't seem to be located.

25 Then there is an issue on questions of responses

1 by the Matrox defendants done in Canada. We have been told
2 that there are additional process steps those defendants
3 carry out which makes the foreign production provisions of
4 Title 35 U.S.C. 271(g) inapplicable. As you may guess, the
5 minute they said that to us, we said, What are those steps?
6 And we have been refused disclosure on that.

7 Yesterday I got a call from Mr. -- I got a letter
8 from Mr. Kelley indicating that if we want, they will make
9 people available with knowledge about their design work for
10 deposition, but we are not going to get any interrogatory or
11 document request.

12 Basically, on the definition of the products --
13 the processes that we wish to have disclosure on, we believe
14 that limiting that to the computer-aided design process with
15 logic synthesis is narrow enough to give us the discovery we
16 want. We know as to some processes the defendants use Design
17 Compiler. What we don't know is whether they have any other
18 products that they have gotten from other suppliers.

19 We have asked them, do you have those? And
20 produce the documents. We have asked both in general and
21 specifically as to one of their -- one of the companies we
22 know provides equipment called Cadence. And basically, we
23 are told we are not going to get an answer. As to other
24 things, when they don't have any documents or it has not been
25 applicable, we have been told that. But as to the generally,

1 are you using somebody else's equipment, are you using
2 Cadence's equipment, we are getting no answer at all.

3 I think that's basically -- that whole approach
4 filters down to everything that is in dispute pretty much on
5 the interrogatories and document requests. As Mr. Kelley
6 said, it is a question of what we are entitled to as far as
7 breadth goes.

8 THE COURT: Okay.

9 MR. MEILMAN: It may very well be there are no
10 other alternate products that the defendants are using. But
11 I think we are entitled to know that.

12 THE COURT: Okay. Let's hear from the other
13 side.

14 MR. KELLEY: Your Honor, let me talk about the
15 271(g) issue in a minute. Let me deal with the document
16 requests first.

17 The fight that we have been having over the last,
18 it's been about three or four weeks the parties have been
19 discussing this in earnest, is these document requests. Once
20 again, let me just read this: Produce all documents -- I am
21 reading from No. 5, Document Request No. 5: Produce all
22 documents concerning the conception, design, development,
23 manufacture, or sale of each of the defendants' ASIC
24 products. Then it goes on and gives some examples sort of
25 thing.

1 There are several. The ones we have objected to
2 and said these are too broad are that kind of thing. They
3 haven't (inaudible) with all products and anything having to
4 do with the design of that product.

5 Now, Mr. Meilman just said that, he said CAD
6 process. As far as I know, that is the first time I have
7 heard them say, what we really need is stuff about the CAD
8 process. Although I am not sure whether he meant -- well,
9 the thing that is relevant here is logic synthesis. It's not
10 the specification, the engineering specification describing
11 what the product was going to do that was formulated back
12 when people were kicking around ideas about what a good
13 product for the company would be. So that's what we have
14 been fighting about now.

15 Ricoh just a few days ago said we will limit the
16 products, as I mentioned, we will limit the products to those
17 products that use logic synthesis.

18 Now, I think the remaining issue is whether the
19 scope of these document requests should be restricted to
20 documents describing the use of logic synthesis or relating
21 to logic synthesis for those products, and not anything
22 having to do with the specification of the product,
23 engineering, planning meetings, memos about how, we have got
24 bugs, our design isn't working, because none of that has
25 anything to do with the claim.

1 THE COURT: Is that an acceptable limitation,
2 Ricoh?

3 MR. HOFFMAN: Your Honor, what we are looking
4 for, as Mr. Meilman, I thought, had indicated, is the
5 documents that relate to the process for manufacturing these
6 ASICs in the designing of the ASICs using systems that have
7 logic synthesis in them. We are not looking for things
8 relating to debugging of the ASICs themselves. We are not
9 looking for things on other types of -- there is some
10 categories -- and I would have to go back to exactly what Mr.
11 Kelley said -- other things that were pre the designing of
12 these ASICs using the particular types of processes that are
13 involved in the claims and in the patent here of ASIC
14 designing processes using logic synthesis.

15 That is what we are looking for. We have told
16 them that. To date, they have produced less than a thousand
17 pages of documents.

18 THE COURT: Is that a different way of saying
19 that you are in agreement with the limitation that has just
20 been proposed? Or are you broadening?

21 MR. HOFFMAN: No. I think we are in general
22 agreement of some of the things. Mr. Kelley rattled off a
23 number of things.

24 THE COURT: So did you. So, counsel, my question
25 to you is, now having heard one another speak, and speaking



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September 8, 2003

VIA FACSIMILE AND U.S. MAIL

Edward A. Meilman
Dickstein Shapiro Morin & Oshinsky, LLP
1177 Avenue of the Americas
New York, NY 10036-2714

Re: Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.
Civil Action No. 03-103-GMS

Dear Ed:

I have your letter to me of August 28.

During the telephone conference with Judge Sleet, we proposed several bounds on the sweeping discovery that Ricoh has originally submitted. The parties indicated to the Court that compromise on discovery appeared possible based on those limiting bounds. The conference confirmed the course of action that we had undertaken prior to the conference when we had determined to begin collecting the following types of materials from AMI, Aeroflex and from the Matrox defendants regarding the operations of Matrox Tech:

for those ASICs for which a defendant's design process included a computer-assisted logic synthesis step, documents relating to computer-assisted logic synthesis operations

Defendants will also produce documents identifying those ASICs whose design did include a computer-assisted logic synthesis step.

Based on the content of the discussion before Judge Sleet and your letter of August 28, I am not aware of any disagreement between the parties as to the appropriate scope of the discovery that defendants will provide. Your letter, however, cryptically states that I "expressed reservations to the Judge" about certain discovery. We did make objection to Ricoh's document requests as drafted, but Ricoh itself did not attempt at the hearing to defend its document requests as drafted. If you were intending to raise some other issue, please be more specific about the nature of the dispute.

Very truly yours,

A handwritten signature in black ink, appearing to be "Christopher L. Kelley", written over a horizontal line.

CLK:gg



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FACSIMILE COVER SHEET

DATE: September 8, 2003

TO: **NAME:** Edward A. Meilman, Esq.

COMPANY: Dickstein Shapiro Morin & Oshinsky LLP

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CITY: New York

FROM: **NAME:** Christopher L. Kelley, Esq.

DIRECT DIAL NUMBER: (650) 463-8113 **USER ID:** 5172

NUMBER OF PAGES, INCLUDING COVER: 2 **CHARGE NUMBER:** 06816.0060.000000

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SUPPLEMENTAL MESSAGE:

Re: Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.

PLEASE SEE CORRESPONDENCE DATED SEPTEMBER 8 , 2003

* * * COMMUNICATION RESULT REPORT (SEP. 8. 2003 5:36PM) * * *

TTI

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FACSIMILE COVER SHEET

DATE: September 8, 2003

TO: NAME: Edward A. Meilman, Esq.
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CITY: New York

FROM: NAME: Christopher L. Kelley, Esq.
DIRECT DIAL NUMBER: (650) 463-8113 USER ID: 5172
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SUPPLEMENTAL MESSAGE:

Re: Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.

PLEASE SEE CORRESPONDENCE DATED SEPTEMBER 8, 2003

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A LIMITED LIABILITY PARTNERSHIP

CHRISTOPHER L. KELLEY
PARTNER
650.463.8113
kelleyc@howrey.com

August 27, 2003

VIA FACSIMILE AND U.S. MAIL

Edward A. Meilman
Dickstein Shapiro Morin & Oshinsky, LLP
1177 Avenue of the Americas
New York, NY 10036-2714

Re: *Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.*
Civil Action No. 03-103-GMS

Dear Ed:

I have your letter to Erik Moller of August 26. Your proposal appears similar to what the defendants agreed to do in a letter I sent you on the 26th, so I believe there is a possible compromise in sight.

Your letter proposes redefining "ASIC Product" to include only those ASICs on which logic synthesis operations were performed. This is a good first step to focusing your request on materials that are relevant to this case. The other necessary restriction is that the design materials requested must be relevant to the operations that Ricoh is accusing, as identified in your response to defendants' interrogatory number 1. These are: "input to Design Compiler of flowcharts or hardware description languages that describe behavioral aspects of an ASIC under design," and use of Design Compiler "to synthesize the hardware cells to be implemented in the desired ASIC." Documentation relating to other aspects of the design is irrelevant to this case. As I noted in my letter of yesterday, defendants have independently undertaken to produce engineering materials relevant to Ricoh's allegations of infringement, as outlined in its interrogatory answer.

With regard to the Matrox defendants, materials relating to design work done in Canada cannot be relevant to this litigation, regardless of whether any kind of logic synthesis was done or not. The recent Federal Circuit decision in *Bayer v. Housey Pharmaceuticals*, confirms what was already evident from the statute: that 35 U.S.C. 271(g) applies only where a patented process is used directly in the manufacture of a product that is later imported in the United States. Ricoh does not need extensive design documentation in order to determine the veracity of the Matrox defendants' contention that, but for the Florida facilities of Matrix Tech that were closed in 2002, Matrox performs no ASIC design work in the United States. We are in the process of obtaining and producing documents sufficient to show the location of its engineering facilities and employees. If Ricoh wishes, the Matrox defendants can then make person(s) with knowledge of the nature and location of Matrox' design work available for deposition.



Edward A. Meilman

August 27, 2003

Page 2

With regard to your interrogatory 7, most of the denials in the answers and many of the facts identified in the counterclaims relate to non-infringement of the Kobayashi patent and its invalidity. These are matters which have been investigated by counsel working for defendants and not facts that were known independently of this litigation. Prior to filing of this litigation none of the defendants was aware of the Kobayashi patent. Defendants will identify experts and offer expert testimony on these issues in accordance with the schedule adopted by the Court. To the extent that there are other specific factual issues within the possession of persons known to defendants, defendants will revise their interrogatory answers to identify such persons.

Very truly yours,

A handwritten signature in black ink that reads "Christopher Kelley /gg". The signature is written in a cursive, flowing style.

Christopher L. Kelley

CLK:gg



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FACSIMILE COVER SHEET

DATE: August 27, 2003

TO: **NAME:** Edward A. Meilman, Esq.

COMPANY: Dickstein Shapiro Morin & Oshinsky LLP

FAX NUMBER: (212) 997-9880 **PHONE NUMBER:** (212) 835-1400

CITY: New York

FROM: **NAME:** Christopher L. Kelley, Esq.

DIRECT DIAL NUMBER: (650) 463-8113 **USER ID:** 5172

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Re: Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.

PLEASE SEE CORRESPONDENCE DATED AUGUST 27, 2003

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September 11, 2003

VIA FACSIMILE AND U.S. MAIL

Edward A. Meilman
Dickstein Shapiro Morin & Oshinsky, LLP
1177 Avenue of the Americas
New York, NY 10036-2714

Re: *Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.*
Civil Action No. 03-103-GMS

Dear Mr. Meilman:

I have your letter of September 10, relating to the bounds of document production discovery from the "Delaware" Defendants.

Your contention that Defendants are "backsliding" is demonstrably false. The bounds that I describe in my letter of September 8 are the same as those set out in my letter to you of August 27. In a responsive letter of the same date you told me that these bounds were unacceptable and that you would raise the issue with the Court. In our hearing before the Court, I argued that discovery should be limited along the same lines proposed in my letter and Judge Sleet appeared to be of the view that this was an appropriate basis for compromise between the parties. Furthermore, Ricoh told the Court then that compromise on that basis was acceptable. See Hearing Tr. at 59-61. Your letter seems to indicate that Ricoh is withdrawing from that position.

As to the Matrox defendants, I refer you to my letter of August 27. We are gathering the documents sufficient to show the location of Matrox engineering facilities and employees and will produce these when they are available. Your statement that we have "asserted that there are subsequent process steps which materially change the product" is false. Our position, set out in my letter of August 27 and in our argument to the Court in Delaware, is that 271(g) applies only when a patented process is used directly in the manufacture of a product that is later imported into the United States. As the Housey case indicates, it is not enough that the claimed process generates information that later leads to the manufacture of an imported good. The processes in



Edward A. Meilman
September 11, 2003
Page 2

claims 13 and 18 of the '432 patent generate "a netlist," not a manufactured ASIC. Discovery concerning all of the various steps taken by Matrox to convert a netlist into an ASIC is irrelevant and unnecessary.

Very truly yours,


Christopher L. Kelley

CLK:gg
cc: Gary M. Hoffman



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FACSIMILE COVER SHEET

DATE: September 11, 2003

TO:

1. **NAME:** Edward A. Meilman **COMPANY:** Dickstein Shapiro, et al.
CITY: New York, NY **FAX #:** (212) 997-9880 **PHONE #:** (212) 835-1400

2. **NAME:** Gary M. Hoffman **COMPANY:** Dickstein Shapiro, et al.
CITY: Washington, DC **FAX #:** (202) 887-0689 **PHONE #:** (202) 785-9700

3. **NAME:** _____ **COMPANY:** _____
CITY: _____ **FAX #:** _____ **PHONE #:** _____

4. **NAME:** _____ **COMPANY:** _____
CITY: _____ **FAX #:** _____ **PHONE #:** _____

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